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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1941 ✓

~~32-39-47-51-52~~  
Nos. ~~988, 1004, 1048, 1063, 1064~~  
and ~~1065, 1070, and 1071~~  
~~53-54~~ 55

IN THE MATTER OF THE REORGANIZATION OF  
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY, *Debtor*

BRIEF OF GROUP OF INSTITUTIONAL INVESTORS  
AND MUTUAL SAVINGS BANK GROUP IN OPPOSITION  
TO PETITIONS OF DEBTOR AND PREFERRED STOCK-  
HOLDERS COMMITTEE FOR CERTIORARI TO REVIEW  
FINDING THAT STOCK IS WITHOUT VALUE (NOS. 1048,  
1070) AND STATEMENT IN RESPECT TO PETITIONS  
FOR CERTIORARI OF CERTAIN CREDITOR INTERESTS  
(NOS. 988, 1004, 1063, 1064 AND 1065, 1071)

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# Supreme Court of the United States

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Nos. 988, 1004, 1048, 1063,  
1064 and 1065, 1070,  
and 1071.

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In the Matter of

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY, *Debtor.*

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RECONSTRUCTION FINANCE CORPORATION,

*Petitioner,*

*vs.*

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY, *et al.,* *Respondents.*

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No. 988

CHICAGO, TERRE HAUTE AND SOUTHEASTERN  
RAILWAY COMPANY, *et al.,* *Petitioners,*

*vs.*

GROUP OF INSTITUTIONAL INVESTORS, *et al.,*

*Respondents.*

No. 1004

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CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY, *Debtor and Cross Petitioner,*

*vs.*

GROUP OF INSTITUTIONAL INVESTORS, *et al.,*

*Respondents.*

No. 1048

TRUSTEES OF PRINCETON UNIVERSITY, <i>et al.</i> , con-	}	No. 1063
stituting the "University Group" of General Mort-		
gage Bondholders of Chicago, Milwaukee & St.		
Paul Railway Company,	<i>Petitioners,</i>	
<i>vs.</i>		
GROUP OF INSTITUTIONAL INVESTORS, <i>et al.</i> ,	<i>Respondents.</i>	

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GUARANTY TRUST COMPANY OF NEW YORK, ETC.,	}	Nos. 1064 and 1065
as Fifty Year Mortgage Trustees,		
<i>Petitioners,</i>		
<i>vs.</i>		
GROUP OF INSTITUTIONAL INVESTORS, ETC., <i>et al.</i> ,	<i>Respondents.</i>	

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E. STANLEY GLINES, ETC., as Fifty Year Mortgage	}	Nos. 1064 and 1065
Protective Committee,		
<i>Petitioners,</i>		
<i>vs.</i>		
GROUP OF INSTITUTIONAL INVESTORS, ETC., <i>et al.</i> ,	<i>Respondents.</i>	

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H. C. ORTON, <i>et al.</i> ,	<i>Petitioners,</i>	}	No. 1070
<i>vs.</i>			
GROUP OF INSTITUTIONAL INVESTORS, <i>et al.</i> ,	<i>Respondents.</i>		

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UNITED STATES TRUST COMPANY OF NEW YORK	}	No. 1071
as Trustee of General Mortgage of Chicago, Mil-		
waukee and St. Paul Railway Company dated		
May 1, 1889, <i>et al.</i> ,	<i>Petitioner,</i>	
<i>vs.</i>		
GROUP OF INSTITUTIONAL INVESTORS, ETC., <i>et al.</i> ,	<i>Respondents.</i>	

**BRIEF OF GROUP OF INSTITUTIONAL INVESTORS AND  
MUTUAL SAVINGS BANK GROUP IN OPPOSITION TO  
PETITIONS OF DEBTOR AND PREFERRED STOCK-  
HOLDERS COMMITTEE FOR CERTIORARI TO REVIEW  
FINDING THAT STOCK IS WITHOUT VALUE (Nos. 1048,  
1070) AND STATEMENT IN RESPECT TO PETITIONS  
FOR CERTIORARI OF CERTAIN CREDITOR INTERESTS  
(Nos. 988, 1004, 1063, 1064 and 1065, 1071)**

The petition for writs of certiorari filed by the Groups on January 17, 1942 (Nos. 975-983) seeks a review and determination by the Court of all issues between the creditor interests.

The Solicitor General has filed a petition on behalf of the Reconstruction Finance Corporation urging that certiorari be granted in view of the "large public importance" of the questions presented. (No. 988) The Solicitor General has also filed a Memorandum on behalf of the Interstate Commerce Commission as *amicus curiae*, stating: "It is important to the efficient performance of the Commission's duties under Section 77 that the procedure to be followed and the findings to be made by the Commission should be established by a definitive decision of this Court." (Nos. 875-883 and 988)

All creditor interests which were appellants below, except two,<sup>1</sup> have filed petitions for certiorari, requesting that the Court specifically determine the particular issues with which they are respectively concerned. (Nos. 1004, 1063, 1064 and 1065, 1071)

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor herein, and H. C. Orton, *et al.*, as a committee

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<sup>1</sup> The appellants below who have not asked certiorari are: (1) Union Trust Company, *et al.*, trustees and certain bondholders under the Gary mortgage (Circuit Court of Appeals No. 7610), and (2) certain adjustment mortgage bondholders (Circuit Court of Appeals No. 7611).



for the holders of preferred stock, request certiorari to review the finding of the Commission, which was affirmed and approved by both courts below, that the stock is without value. (Nos. 1048, 1070)

# I.

## STATEMENT IN RESPECT TO PETITIONS FOR CERTIORARI FILED BY INTERESTS REPRESENTING CERTAIN TERRE HAUTE BONDS, FIFTY-YEAR MORTGAGE BONDS AND GENERAL MORTGAGE BONDS. (Nos. 1004, 1063, 1064, AND 1065, AND 1071)

The petition for writs of certiorari filed in this proceeding by the Group of Institutional Investors and the Mutual Savings Bank Group (Nos. 875-883) embraces all of the issues between the creditors. We believe that the interests of the many classes of creditors in this complex railroad reorganization are so related and so interdependent that only by such a review can the Court determine whether the Commission's report meets all necessary formal requirements and whether the plan is fair and equitable.

Certain creditor interests have filed separate petitions for certiorari, each petition being confined to the treatment of the particular securities with which the respective moving parties are primarily concerned. Such petitions have been filed by creditors interested in the issues of the Chicago, Terre Haute and Southeastern Railway Company, the Fifty-Year Mortgage (5's of 1975), and the General Mortgage. The representatives of the Fifty-Year Mortgage Bonds who have filed a petition state that they do not object to the granting of the comprehensive writs of certiorari sought by the Groups, and recognize that "of necessity" the questions which they present in their separate petition would be included in the review sought by the Groups' petition.

The trustee and holders of General Mortgage Bonds who have filed petitions also state that they do not object to the granting of the petition of the Groups.

The Terre Haute interests likewise do not deny that the questions raised in their petition would of necessity be included in the review sought by the Groups' petition, but have also filed a petition seeking a review of the issues arising out of their particular claims. A limited review would not do justice to the broad problem awaiting solution. Neither, we believe, would it assure a fair determination of the narrow issues to which such a review would be restricted, because those issues involve relative rather than absolute rights.

The Circuit Court of Appeals held:

"The plan as such, ignoring the absence of findings, has support in the evidence. It violates no requirement (save findings) announced in the Consolidated Rock Products case." (R. 2312)

The court's conclusion that findings were inadequate extends to all controversies between creditor interests. It does not extend to the exclusion by the Commission of the old common and preferred stock upon a finding that the equity of such stock was without value, that finding being held to be sufficient. As to the conflicts between creditor interests, our petition for certiorari is inclusive of all the controversies brought forward by the various petitions subsequently filed by other creditors. Our petition not only challenges the decision that the Commission's findings were inadequate, but also presents the proposition that, if the plan be deficient in supporting findings, as the Circuit Court of Appeals has held, it should be returned to the Commission with directions sufficiently clear and explicit to enable the administrative body to redraft it in such manner that it will receive the approval of the courts.

We submit that the petitions for review of the plan, filed by the Terre Haute creditors, the 5's of 1975 and the General Mortgage interests, emphasize the need for granting the comprehensive petition of the Group of Institutional Investors and the Mutual Savings Bank Group. If that petition were not to be granted we submit that all individual petitions should be denied.

## II.

**THE DEBTOR'S CROSS PETITION AND THE PETITION OF THE PREFERRED STOCKHOLDERS COMMITTEE FOR WRITS OF CERTIORARI SHOULD BE DENIED.**

The provisions of the plan which deny any participation in the reorganized property to the common and preferred stocks because they are found to be without value, have been sustained by the District Court and the Circuit Court of Appeals.<sup>1</sup> We believe that the record made this conclusion inevitable, and that no question of substance can be raised as to its correctness. No dividends have been paid upon the common or preferred stock of this company since 1917 (R. 617), and it is clear now that the equity in the property lost its value many years ago. In the period from 1917 to the effective date of the plan, the income available for interest was \$133,000,000 less than the amount required for interest on debt, or an average annual deficit for the 21 years of more than \$6,000,000<sup>2</sup>.

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<sup>1</sup> "A plan of reorganization," Section 77(b) provides, "may include provisions modifying or altering the rights of stockholders generally, or any class of them, either through the issuance of new securities of any character, or otherwise;\*" Subsection (e) of Section 77 provides that: "submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, \* \* \* that at the time of the finding the equity of such class of stockholders has no value \* \* \*."

<sup>2</sup> The net income available for dividends or deficit therein for each of the years from 1910 through 1937 was listed in the debtor's brief of May 31, 1938, before the Commission. (p. 10) The deficit in income available for dividends for the 20 years from 1917 through 1937 was \$115,596,701.39. The income available for interest in 1938 was \$6,023,296 (R. 2180), and the interest charges on debt were \$23,739,279 (R. 2174), leaving a deficit in the income available for dividends of \$17,715,983. For the entire 21-year period from 1917 through 1938 the deficit in income available for dividends therefore amounted to \$133,312,684, or an average annual deficit of \$6,348,223.

Throughout that period, therefore, the debt of the property has greatly increased both in relation to its earnings and in absolute terms. (R. 1873, 2180) The debt condition of the property was not rectified by the 1928 receivership. On the contrary, the railroad emerged from that receivership with an actual increase in its funded debt requirements. (Chicago, Milwaukee & St. Paul Reorganization, 131 I.C.C. 673, 705) Even at the time of that receivership the stock had neither earned nor received dividends for many years; and it is clear now, we believe, that the stock interests should not have survived that receivership.

The issue as to the stock is the only one in the proceeding as to which the court below found that the determination of the Commission was supported by adequate findings. This feature of the case, therefore, is closed (R. 2335), and unless the Court grants certiorari the determination of at least this issue will have been achieved by the seven years of litigation. To this end the Groups oppose the petition of the debtor, and the petition of H. C. Orton, *et al.*, as a committee for the holders of preferred stock, and request denial of the writs of certiorari prayed for by them to review the finding of the Commission, affirmed by both courts below, that the stock is without value.

NO SUBSTANTIAL CONTROVERSY EXISTS IN RESPECT TO THE  
FINDING THAT THE STOCK IS WITHOUT VALUE

The finding of the Commission that the stock is without value was made after full and protracted hearings and upon a most comprehensive record. The Trustees in Bankruptcy and their staff offered extensive studies and testimony. The Commission placed in the record much basic data prepared by its own staff relating to the elements of physical value of the property, its traffic, and its past, present and prospective earning capacity. (Reports of Interstate Commerce Commission's Bureau of Valuation, Bureau of Finance and Bureau of Finance Accountants, which are parts of the record but not reprinted. R. 2151.)

The finding of the Commission that the stock is without value is explicit and the report contains a full statement of the Commission's reasons for that conclusion, as the statute requires. (Sec. 77(e)) The petitions for certiorari of the debtor and the preferred stockholders do not raise any question of substance, either as to the existence of evidence to support the Commission's finding or as to the adequacy of its findings.

(a) *Finding by the Interstate Commerce Commission.*

The report of the Commission approving the plan of reorganization, which was duly certified to the court, provided:

"We find that the equity of the holders of the debtor's preferred stock and its common stock has no value and the holders of claims in classes 24 and 25, therefore, are not entitled to participate in the plan." (R. 2260)

Such a finding is sufficient even apart from the specific provisions of Section 77. *In re 620 Church Street Building Corp.*, 299 U.S. 24 (1936); *R. R. Commission v. P. G. & E. Co.*, 302 U.S. 388 (1938).

The "reasons" for this conclusion were stated fully by the Commission in its report approving a plan of reorganization, in strict conformity with the provisions of Section 77(e). (R. 2258-2260) In addition to the reasons quoted on page 14 of the debtor's cross petition, the following reasons, among others, are stated by the Commission in support of its conclusion that the stock is without value:

(1) "The last year when dividends were paid on the stock was in 1917." (R. 2259)

(2) "The record of the Milwaukee's earnings" from 1910 through 1938 supports the finding that the stock is without value. (R. 2259, referring to earlier statement in Commission's report on R. 2180.)

(3) "Between 1930 and 1936 the income available for payment of interest, as adjusted by the committee and accepted by the debtor, varied between a high level of

\$20,298,074 and a low of \$2,680,530, with an average of \$10,270,360. Similarly adjusted, the available income in 1937 was \$8,224,809 and in 1938 \$6,023,296, bringing the average, 1930 to 1938, to \$9,571,180. Future normal earnings were estimated by the committee at \$15,894,000 a year. When these amounts are compared with the annual interest charges on the principal of the present debt, \$23,739,000 a year, it is evident that the earning power of the system since the period of peak earnings is entirely inadequate to cover the principal of the debt, disregarding more than \$118,000,000 of unpaid interest." (R. 2259)

(4) "We are required under section 77(e) to make findings in connection with the question of submitting the plan to the stockholders, and in doing so we must consider the aggregate amount of claims of the bondholders and other secured creditors in the light of the earning power of the system, past, present, and prospective, and all relevant facts. Unless an equity for the stockholders is established we are unable to find justification for their participation in the plan. *Case v. Los Angeles Lumber Products Co.*, U.S. (Decided November 6, 1939)." (R. 2260)

These are some of the reasons stated by the Commission in its report for finding that the stock is without value and that the holders thereof are not entitled to participate in the plan.

*(b) Affirmance by the District Court.*

The order of the District Court approving the plan provided:

"The Finding of the Commission that the equity of the Preferred and Common Stockholders of the Debtor has no value is affirmed." (R. 1991)

The debtor's cross petition makes no effort to controvert any of the controlling reasons stated by the District Court for thus affirming the finding that the stock is without value. In so doing the court considered not only the evidence certified by the Commission but also the voluminous oral and documentary evidence introduced in court. Some of the reasons stated by the court on the basis of this comprehensive evidence were:

(1) "The record shows that no dividends have been paid upon the stock of the Debtor or its predecessor since 1917." (R. 1873)

(2) "Even in the ten-year period ending with 1930, which included the peak years of 1928 and 1929, income available for interest fell far short of the amount needed to service the funded debt which was less than on January 1, 1939, the effective date of the Plan. This condition has been brought about not entirely by the financial depression but has been contributed to by many factors such as increased costs, taxes, wages, competition in other forms of transportation and the like. In no year since 1930 has the income available for interest been equal to the amount required under the proposed Plan to meet charges ahead of dividends." (R. 1873)

(3) "The objectors [the debtor and the preferred stockholders committee] do not dispute any of the facts embodied in the elements considered by the Commission in reaching its conclusions but the contention is made that the outlook for the future is bright and the prospect for increased earnings promising and this situation, it is claimed, justifies a finding of some value for the equity owners. An expert was called who voiced this view and expressed at some length his opinion as to future earnings. That witness expressed the view that the Debtor's properties were efficiently operated and were in good physical condition and that he felt, in the light of the present tendencies, that it was not too much to expect that a time might be reached, some time in the future, when the railroad might earn a sufficient amount to have available for the payment of interest \$20,300,000. That time was referred to as the future normal year but the witness was unwilling even to venture a guess when such time might arrive. Moreover, if such an amount were earned and available for the payment of interest, the capitalization of this amount at four per cent would produce slightly over \$500,000,000 which is a less amount than the permissible capitalization fixed by the Commission. Under the Plan approved by the Commission, if \$20,300,000 were available for the payment of interest, there would only be



enough to pay dividends on the new preferred stock and none on the new common, assuming the additional amount for additions and betterments contemplated by the Plan were authorized by the Board of Directors, and the preferred stock under the Plan represents the interest of present bondholders. If applied to the existing indebtedness, including unpaid accrued interest to January 1, 1939, such an amount would fall short by some \$9,000,000 of paying interest at the average existing rate carried by the obligations of the Debtor." (R. 1873-4)

*(c) Approval by the Circuit Court of Appeals.*

On the record before it, the Circuit Court of Appeals passed on the finding that the equity has no value, in precise and categorical terms, and sustained the action of the Commission and the District Court in respect thereto, stating in part:

"We are well satisfied that the evidence supports the finding of the Commission approved by the District Court 'that the equity of the holders of the debtor's preferred stock and its common stock has no value.' \* \* \*

"If the Commission gave value to the common and preferred stock, it would have violated one of the first requirements of a valid reorganization as announced in the Consolidated Rock Products Company case. It would have taken property from the mortgagees and given it to the stockholders, an act which would not only have violated the law but would have transgressed all the rules of fairness which must be at the bottom of all reorganization plans." (R. 2311)

On Motion to Modify the Opinion, the Circuit Court of Appeals further held on January 12, 1942:

"Now, to make our position entirely clear, we add this memorandum and hold that the finding of the I.C.C. as to absence of value of old common and preferred stock, is specific, definite and certain, and fully meets the rule which requires finding on values of assets.



"Second, we meant to hold, and do hold, that the evidence supports this finding, that there is no value to either the common or preferred stock of debtor \* \* \*." (R. 2335)

These conclusive reasons for the finding that the stock is without value, as stated by the Commission and both courts below, are not controverted by the stock interests. They do not deny that since this property ceased to pay dividends in 1917 its earnings have failed to meet the interest requirements on its debt by an average annual amount of more than \$6,000,000. Neither may they deny that the average normal prospective earnings estimated by the debtor's own witness in September, 1940, would fall short of meeting interest requirements by approximately \$9,000,000 annually. (Opinion, District Court, R. 1873-4) Faced with these past and prospective earnings, the debtor states that it prefers "to limit the discussion to the earnings of the Railroad Company for 1941 and the month of January, 1942." (Debtor's Cross Petition, p. 17)<sup>1</sup> Substantially the same contention was presented to and rejected by the court below. The court stated:

"This finding [that the stock is without value] is sharply challenged by the old stockholders who point to the present, sharp upturn of business activities, particularly railroads, stating that the first eight months of 1941 show an increase in gross operating revenues over 1940 of 22.8%, and estimate that the income available for fixed

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<sup>1</sup>The preferred stockholders committee states that "The Commission \* \* \* refused to consider any evidence of physical value." (Petition of Preferred Stockholders Committee, p. 8.) Apparently the committee overlooked the fact that the Commission itself placed in the record the findings of its Bureau of Valuation showing the elements of value of the physical property, and both in discussing the value of the debtor's properties as a whole and in concluding that the stock is without value, found: "The reproduction cost of the system properties \* \* \* was \$662,759,838." (R. 2164, 2259)

charges for 1941 will be \$31,140,683.<sup>1</sup> \*\*\* We are well satisfied that the evidence supports the finding of the Commission approved by the District Court 'that the equity of the holders of the debtor's preferred stock and its common stock has no value.' And this is true even though the evidence of current earnings made since the plan was approved, is received and considered." (R. 2310-2311)

Reliance by the stock interests upon wartime traffic and earnings disregards past experience. The Interstate Commerce Commission has characterized wartime traffic and earnings thus: "We know from past experience that the upswing in business which war brings is temporary and likely to be followed by an aftermath in which conditions will be worse than before." (Fifty-third Annual Report of Interstate Commerce Commission to Congress, p. 5.) One aftermath of World War I was a substantial reduction in the earnings of this property. (Chicago, Milwaukee & St. Paul Reorganization, 131 I.C.C. 673, 715.)

Less than a month ago the Interstate Commerce Commission, in refusing to increase the new capitalization authorized by it for another railroad undergoing reorganization, because of the bulge in earnings in the first six months of 1941, stated that such earnings were "abnormal owing to threatening war conditions, and cannot serve as a basis for the formulation of a plan of reorganization." (Supplemental Report of Interstate Commerce Commission and St. Louis Southwestern Railway Company Reorganization, Finance Docket No. 11040, dated March 9, 1942, p. 5.)

Here, likewise, the Court is asked to disregard the earnings of the past, and the normal earning capacity of the property in the future, and to require that the Commission base a plan of

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<sup>1</sup>The amount now stated by the debtor as the Income Available for Fixed Charges in 1941 is less by \$2,200,964 than that estimated by the debtor in the Circuit Court of Appeals. (Debtor's Cross Petition, p. 18)

reorganization upon the earnings of the railroad company "for 1941 and the month of January, 1942," the showing upon which the debtor rests its petition for certiorari. (Brief, March 31, 1942, p. 17.) We submit that such a contention does not present a question of substance for this Court and ask that the petitions for certiorari of the debtor and the preferred stockholders be denied.

Respectfully submitted,

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